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No. 91-1707

In The

Supreme Court of the United States

October Term, 1991

IN RE
UNITED SERVICES AUTOMOBILE ASSOCIATION,

Petitioner

Petition For Writ Of Mandamus, Prohibition Or Other Appropriate Remedy To The United States District Court Central District of California

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Did the district court commit clear legal error by holding, contrary to *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), that an unincorporated association with members residing in California may be sued in federal court by other California residents pursuant to diversity jurisdiction?

2. Did the district court commit clear legal error by holding, contrary to *Tuck v. United Services Auto. Assn.*, 859 F.2d 842 (10th Cir. 1988) *cert. denied* 489 U.S. 1080 (1989) and *Baer v. United Services Auto. Assn.*, 503 F.2d 393 (2nd Cir. 1974) that United Services Automobile Association [USAA], a Texas unincorporated insurance exchange, is subject to federal diversity jurisdiction?

3. Do the extraordinary circumstances of this case, premised upon the district court's patently erroneous assertion of diversity jurisdiction and exacerbated by the court's continuing threat to exercise a non-existent, illusory "inherent power" to impose sanctions against USAA in the sum of $1.7 million, mandate the exercise of this Court's peremptory intervention?

LIST OF ALL PARTIES

Petitioner UNITED SERVICES AUTOMOBILE ASSOCIATION is the defendant in district court and was the petitioner in the court of appeals.

Plaintiffs in the district court and real parties in interest in this Court are Laughlin E. Waters and Voula Waters.

William Fremming Nielsen is the Judge presiding over this action presently pending in the United States District Court, Central District of California, and is the respondent to whom the writ is sought to be directed.

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Friedenthal, Kane, Miller, *Civil Procedure*, West Publishing Co. (1985), sect. 2.6 at p.29 8

OPINIONS BELOW

The district court's order, ruling that United Services Automobile Association [USAA], an unincorporated association with 186,000 California members may be sued in federal court pursuant to diversity jurisdiction by other California residents, is reproduced in the appendix at p. A-1.

Two documents reflect the ruling of the Ninth Circuit Court of Appeals on USAA's Petition for Writ of Mandamus. The order of two judges denying the petition from writ of mandamus is reproduced at p. A-7. The dissenting opinion of Judge T. G. Nelson, urging that extraordinary relief should have been granted by the Ninth Circuit Court of Appeals to United Services Automobile Association is reproduced at pp. A-7 to A-19.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. section 1651.

OTHER PROVISIONS OF FEDERAL LAW APPLICABLE TO THIS CASE

The relevant provisions of Title 28 of the United States Code, and of Rule 11, Fed.R.Civ.P., are reproduced in the appendix beginning at p. A-734.

STATEMENT OF THE CASE

The Parties

Laughlin E. Waters, a senior judge of the United States District Court for the Central District of California, and his wife, Voula Waters, [Waters] experienced a fire at their residence in the State of California. They made a claim for fire damage to their homeowners insurance carrier, USAA. USAA is not a corporation, but instead, an unincorporated association denominated a "reciprocal insurance company," with members in all 50 states, including 186,000 members who are residents of the State of California.

Complaint Filed Pursuant to Diversity Jurisdiction In Federal District Court, Central District of California

A dispute arose between Waters and USAA regarding the insurance claim. Waters filed a lawsuit for bad faith against USAA in the United States District Court for the Central District of California, asserting diversity jurisdiction.[1] (A-33 to A-46.)

Judge William Fremming Nielsen from the Eastern District of Washington was assigned as judge of the *Waters* federal court action following recusal of Waters' colleagues from the Central District Federal Court.

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[1] Significantly, Waters did not allege USAA to be a *corporation*, rather, they alleged USAA to be a "domestic reciprocal insurance company with its principal place of business in the State of Texas." (A-34.)

Motion to Dismiss

USAA promptly moved to dismiss the *Waters* federal court action for lack of diversity jurisdiction.[2] (A-118 to A-125.)

USAA's memorandum of points and authorities in support of the motion to dismiss described the status of United Services Automobile Association as an unincorporated association with members residing in the State of California. Since Waters reside in California and since USAA has California members, the parties are not "diverse" under 28 U.S.C. 1332; thus, the federal court lacks diversity jurisdiction. (A-120.)

USAA drew the district court's attention to *Tuck v. United Services Auto. Assn.*, 859 F.2d 842, 844 (10th Cir. 1988), in which it was determined that the very defendant in the *Waters* case was an unincorporated association and was a citizen of every state in which USAA had members. In *Tuck* it was specifically determined that since USAA had members in the State of Oklahoma and was being sued in that case by Oklahoma residents, diversity jurisdiction did not exist. (A-120.)

USAA's papers relied on *Carden v. Arkoma Assocs.*, 494 U.S. 185, 110 S.Ct. 1015 (1990), in which this Court ruled that "to determine, for diversity purposes, the citizenship of an artificial entity, the court [must] consult the citizenship of . . . all of the entities' members." (*Carden, supra*, 110 S.Ct. at 1021.) USAA pointed out in its reply

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[2] Waters filed the federal court action on July 5, 1991. USAA moved to dismiss the complaint for lack of subject matter jurisdiction on July 28, 1991.

memorandum in support of its motion to dismiss that Justice Scalia, writing for the Court in *Carden*, emphatically noted "that while corporations have been considered citizens of the state of their incorporation since at least 1844, the court has 'firmly resisted extending that treatment to other entities.' " (USAA's Reply Memorandum in Support of Motion to Dismiss . . . reproduced in the appendix at p. A-398, quoting *Carden*, 110 S.Ct. at 1018.)

Among other authorities, USAA further cited *Baer v. USAA*, 503 F.2d at 393 (2d Cir. 1974), wherein the court of appeals, sua sponte, ruled that USAA must be regarded as an unincorporated association. Like the court in *Tuck v. United Services Auto. Assn., supra*, the Second Circuit ruled that since USAA had members who were citizens of the same state as the plaintiff, plaintiff's federal court action was required to be dismissed for lack of subject matter jurisdiction. (A-399 to A-400.)

Opposition to Motion to Dismiss and Request for $1.7 Million in Sanctions

Waters responded to USAA's motion to dismiss for lack of subject matter jurisdiction with an "Opposition to Motion to Dismiss and Request for Sanctions." (Reproduced in the appendix at pp. A-126 to A-165.) Waters pointed to a list of 172 previous lawsuits, unrelated to the Waters case, going back almost twenty years, mostly predating the 10th Circuit in *Tuck* and the United States Supreme Court decision in *Carden*, where USAA had either submitted to or initiated federal court litigation. Waters requested almost $2 million in sanctions under

Rule 11 and under "the inherent power" of the court for USAA's assertion of or acquiescence to federal jurisdiction, despite the fact that USAA's stand on jurisdiction had, in *none* of the 172 cases themselves, led to sanctions against USAA. (A-166 to A-393.)

Waters urged that, despite *Tuck, Baer,* and *Carden,* it had never truly been determined that USAA was an unincorporated association which could not be sued under diversity jurisdiction by a resident of any state where USAA had members. (*See,* A-153 to A-156.)

Waters requested, and the district court ordered, further briefing to determine whether (1) Waters could sue USAA pursuant to diversity jurisdiction; and (2) whether USAA should be sanctioned for submitting to or asserting diversity jurisdiction over the past 20 years. (*See,* A-155 to A-156, A-451 to A-453.)

Decision of the District Court

The district court ruled that, contrary to *Tuck, Baer* and *Carden,* USAA is a *corporate-like* entity that may be sued in federal court under diversity jurisdiction. (A-5.)

The district court further ruled that Waters' motion for sanctions would continue under advisement and set a sanctions hearing date of May 14, 1992. (A-5, A-656.)

The district court also *opened discovery* on the sanctions question. USAA has been ordered to produce various sets and subsets of documents from the court files, attorney files and claim files in the 172 previous cases.

Trial has been set in the underlying bad faith case for June 22, approximately one month after the scheduled hearing on imposition of sanctions. (A-656.)

Request For Certification and For Stay

USAA moved the district court to *certify for immediate appeal* the district court's order denying USAA's motion to dismiss for lack of diversity jurisdiction. (A-602 to A-629.)

USAA also moved to stay the proceedings in district court during the period while either (1) the certified question was immediately appealed; or (2) if certification were to be refused, then while USAA petitioned the Ninth Circuit Court of Appeals for a writ of mandamus. (A-630 to A-639.)

The district court refused to certify the jurisdiction question for immediate appeal and denied the request for stay.

Petition for Writ of Mandamus In The Ninth Court of Appeals

USAA petitioned the Ninth Circuit Court of Appeals for a writ of mandamus to direct the district court to dismiss the *Waters* action for lack of diversity jurisdiction. (A-688 to A-720.) USAA also moved the court for an emergency stay of proceedings. (A-721 to A-733.)

On March 13, 1992, the court of appeals issued its order, two judges concurring and one dissenting, denying USAA's petition for writ and denying the stay as moot. (A-7.)

Judge T. G. Nelson, on March 26, 1992, issued a separate dissenting opinion, concluding USAA had established a "compelling case" for mandamus relief which *should have been granted.* (A-19.) He noted that USAA *properly* moved to dismiss the *Waters* case because USAA is an unincorporated association with 186,000 members in the State of California and thus cannot be sued under diversity jurisdiction by the Waters, who are also California residents. Judge Nelson characterized the district court's ruling that diversity jurisdiction exists in this case as "clearly erroneous." (A-12.) Most significantly, he pointed out that the usual remedy of appeal is woefully inadequate in this case and that "USAA has stated not only a justiciable claim for extraordinary relief by mandamus, it [USAA] *has stated a compelling case for [mandamus].*" (A-19, emphasis added.)

Because USAA's conduct has been proper *in this case,* i.e. properly moving to dismiss this case where diversity jurisdiction is lacking, because the district court has no jurisdiction over this case at all, and because USAA is facing sanctions requested at $1.7 million for its conduct in previous, *unrelated* litigation that did not occur before this judge, together with the uncertainty imposed on USAA by conflicting decisions on its status from various courts of appeals, relief by a writ of mandamus is urgent, appropriate, and necessary.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE DISTRICT COURT IS CLEARLY ERRONEOUS; THE FEDERAL COURT HAS NO SUBJECT MATTER JURISDICTION OVER THIS CASE

A district court may have jurisdiction to decide a case or controversy between citizens of different states. 28 U.S.C. section 1332(a) provides as follows:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000 . . . and is between –
>
> (1) citizens of different States;. . . . "

The established corollary to the statutory provision stated above is that a district court may *not* exercise diversity jurisdiction where the plaintiff and the defendant in the action are citizens of the *same state*. (*See, Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806); Friedenthal, Kane, Miller, *Civil Procedure*, West Publishing Co. (1985), sect. 2.6 at p. 29.)

Accordingly, Waters cannot sue USAA in federal court pursuant to diversity jurisdiction if Waters and USAA are both considered citizens of the State of California.

A. The United States Supreme Court in *Carden v. Arkoma Assoc.*, 494 U.S. 185 (1990) Established That While a Corporation is Treated as a Citizen of the State Which Created It, the Citizenship of Other Artificial Entities is Determined by Reference to the Citizenship of its Partners or Members

This Court in *Carden v. Arkoma Assoc.*, 494 U.S. 185, 110 S.Ct. 1015 (1990), ruled that only *corporations* may be considered juridical persons characterized as citizens of the state in which they were created. This Court observed that it had refused to extend that treatment to other artificial entities with one particular exception that has been limited to its facts. This Court stated:

> "While the rule regarding the treatment of corporations as 'citizens' has become firmly established, *we have* (with an exception to be discussed presently) *just as firmly resisted extending that treatment to other entities.*" (*Carden, supra,* 110 S.Ct. at 1018, emphasis added.)

The singular exception to the rule that only true corporations may be treated as citizens of the state in which they were incorporated is found in *Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933), which held that the entity known as sociedad en comandita, created *under the civil law of Puerto Rico*,[3] could be treated as a citizen of

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[3] The district court here failed to articulate and therefore presumably failed to recognize the fundamental analytical differences concerning juridical status of artificial entities created under common law compared to those created under civil law. *Russell* itself is emphatic in its rationale of such distinction, viz: "The tradition of *the common law* is to treat as legal persons

(Continued on following page)

Puerto Rico for purposes of determining federal court jurisdiction. (*Carden, supra,* 110 S.Ct. at 1018.) The Supreme Court had previously ruled in a unanimous opinion in *Steelworkers v. R.H. Bouligny, Inc.*, 382 U.S. 145, (1965) that the *Puerto Rico* decision regarding the sociedad en comandita was *limited to its facts* and that the doctrinal wall limiting corporations, *only*, to treatment as juridical persons "would not be breached." (*Carden, supra,* 110 S.Ct. at 1018.)

Since at least 1900, with the single exception of the sociedad en comandita, it has been the rule that artificial entities, although possessing some of the characteristics of a corporation, may *not* be deemed citizens under the jurisdictional rule established for corporations. (*Carden, supra,* 110 S.Ct. at 1018, citing *Great Southern Fire Proof Hotel Co. v. Jones,* 177 U.S. 449 (1900).)

In the present case the district court ruled that although USAA is not a corporation it has sufficient corporate traits and a "corporate-like personality" so as to enable the courts to treat USAA like a corporation for diversity jurisdiction purposes, just as the sociedad en comandita was treated as a corporation in *Puerto Rico v. Russell, supra.* (A-5.)

The district court in this case recognized that *Baer v. United Services Automobile Assn., supra,* and *Tuck v. United*

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only incorporated groups and assimilate all others to partnerships. (Citations omitted.) The tradition of *the civil law,* as expressed in the Code of Puerto Rico, is *otherwise.*" (*Puerto Rico v. Russell & Co., supra,* 288 U.S. at p. 479, emphasis added.)

Services Automobile Assn., supra, both determined that USAA could not be treated as a juridical person for purposes of diversity. However, the district court refused to apply those cases, incorrectly concluding that this Court's decision in *Carden* permits an unincorporated association, such as USAA, to be treated as a juridical person for diversity purposes in that USAA has certain corporate-like characteristics. (*See,* A-5.)

Judge Nelson, in his dissent from the Ninth Circuit Court of Appeals' denial of USAA's petition for mandamus summed up the clearly incorrect decision of the district court in this case as follows:

> "*The district court decision is clearly erroneous.* In my view, the district court has either misread or refused to apply controlling Supreme Court and Ninth Circuit precedent on the issue of diversity jurisdiction over unincorporated associations. . . . ¶ [The district court's] dismissal of *Carden* and *Bouligny,* not to mention *Baer* and *Tuck,* is simply insupportable." (A-12 to A-15, emphasis in original.)

B. Two Federal Appeals Courts Have Ruled That USAA, the Very Defendant in This Case, is an Unincorporated Association Which is a Citizen of Each and Every State In Which USAA Has Members

In *Baer v. USAA,* 503 F.2d 393 (2d Cir. 1974) the court of appeals, sua sponte, raised the diversity jurisdiction issue and held that USAA is an unincorporated association and should be considered, for diversity purposes, to be a citizen of each state in which USAA has members. (*Baer, supra,* 503 F.2d at 395-396.)

The *Baer* court specifically examined the organization of United Services Automobile Association under the Texas statutes and ruled that USAA is not a corporation but instead, a type of association denominated a reciprocal insurance exchange. The *Baer* court observed:

> "For the purpose of determining whether diversity jurisdiction exists, *unincorporated associations* have long been considered to be citizens of each and every state in which the association has members. Thus, if the unincorporated association party to a lawsuit has any member whose state citizenship coincides with the state citizenship of any of the opposing parties in the lawsuit, *a federal district court has no diversity jurisdiction.*" (*Baer, supra,* 503 F.2d at p. 395, emphasis added.)

The *Baer* court, accordingly, remanded the case to the district court with directions to dismiss the *Baer* complaint against USAA for lack of subject matter jurisdiction.

In *Tuck v. USAA,* 859 F.2d 842 (10th Cir. 1988), *cert. denied,* 489 U.S. 1080 (1989), the Court of Appeals for the Tenth Circuit reexamined the identical issue with respect to USAA and agreed with *Baer,* as follows:

> " 'For purposes of diversity jurisdiction, the citizenship of an unincorporated association is the citizenship of the individual members of the association.' [Citations omitted.] . . . ¶ This is not the first time that USAA has faced this problem. In *Baer v. United Services Automobile Ass'n,* 503 F.2d 393 (2d Cir. 1974), plaintiff Baer appealed a judgment in favor of USAA to the Second Circuit. The Court of Appeals raised the question of jurisdiction sua sponte, and after a

> careful evaluation of USAA's status under Texas law, determined that, for diversity purposes, USAA was properly considered a citizen 'of each and every state in which [it] has members.' [Citation omitted.] The Tucks offer nothing that persuades us to depart from the holding in *Baer*. Accordingly, we are forced to conclude that, as the case now stands, there is not complete diversity among the parties and subject matter jurisdiction is lacking." (*Tuck, supra,* 859 F.2d at 844-845.)

The court of appeals in *Tuck* noted that even after the *Baer* decision USAA had either sued or been sued in federal court. The *Tuck* court stated that it *expected USAA to move to dismiss all pending diversity litigation.* (*Tuck, supra,* 859 F.2d at 845, fn.3.)

II.

RELIEF VIA EXTRAORDINARY WRIT IS REQUIRED IN THIS CASE

A. The Remedy of Mandamus is Particularly Appropriate Where, as Here, the District Court has Improperly Asserted Jurisdiction But Where, In Fact, the District Court has No Jurisdiction Over The Case

This Court has ruled that the remedy of mandamus is appropriate in those cases where inferior courts, such as the district court in this case, have engaged in a usurpation of power and where the district court must be confined to the lawful exercise of its prescribed jurisdiction.

> "[The remedy of *mandamus*] *has traditionally been used* in the federal courts only *to confine an*

> *inferior court to a lawful exercise of its prescribed jurisdiction* or to compel it to exercise its authority when it is its duty to do so." (*Kerr v. United States District Court*, 426 U.S. 394, 402 (1976), emphasis added.)

This Court will issue mandamus where the case involves special circumstances or a question of public importance to restrain a district court from further exercise of jurisdiction where, in fact and in law, the district court has no such jurisdiction. (*See, e.g., Ex Parte Republic of Peru*, 318 U.S. 578 (1943).)

The district court has in fact and in law improperly asserted diversity jurisdiction in this case. Two federal circuit appeals courts have ruled that USAA, the very defendant in this case, is an unincorporated association which cannot be sued pursuant to diversity jurisdiction by a resident of any state where USAA has members from the same state. Since the Waters are California residents and since USAA has 186,000 members in the State of California, diversity jurisdiction is lacking. Moreover, the federal court of appeals in *Tuck v. United Services Automobile Association, supra*, has observed that USAA is *expected to*, or required to, move to dismiss cases such as the present one where diversity jurisdiction is lacking.

If there were any doubt about USAA being "construed" as a corporation because it may have some corporate-like attributes, that doubt was erased when this Court ruled in *Carden v. Arkoma Associates, supra*, that a "corporation" for diversity purposes was to be strictly construed and that the "doctrinal wall" prohibiting corporate-like entities from being dubbed "corporations" for

diversity jurisdiction purposes could not and would not be breached.

Thus, because the district court has acted outside its jurisdiction in continuing to allow the *Waters* case to proceed in federal court, mandamus should issue to order the district court to dismiss this action and confine the district court to the lawful exercise of its *prescribed* jurisdiction.

B. This is an Exceptional Case of Public Importance Which Requires this Court's Intervention via Mandamus in Order to Enforce This Court's Appellate Jurisdiction

1. The District Court, Without Jurisdiction to Hear This Case, is Acting Further Beyond Its Authority by Ordering Discovery Regarding USAA's Position on Diversity Jurisdiction in 172 Previous Cases and By Entertaining Waters' Motion for Sanctions, the Hearing On Which Is Scheduled for May 14, 1992

The pendency of a hearing on Waters' request for $1.7 million in sanctions for USAA's purported conduct on the subject of diversity jurisdiction in 172 previous, and unrelated, cases makes this a particularly critical and exceptional case requiring this Court's intervention via mandamus.

Judge Nelson in his opinion made the point regarding the exceptional nature of this case:

> "In addition, *USAA is exposed to both the necessity to litigate, and the potential for imposition of sanctions* by the district court here for doing no more than legitimately raising an issue relating to the

district court's jurisdiction. *USAA will be faced with justifying or explaining its position in those 172 cases, dating back* to *Baer v. USAA*, 503 F.2d 393 (2d Cir. 1974). In addition to the costs associated with the trial itself, the sanctions effort exposes USAA to further fruitless effort since the court has no subject matter jurisdiction. *This is an unusual situation for a litigant to find itself in and is an element of prejudice which does not arise in the routine or garden variety struggle over subject matter jurisdiction."* (Judge T. G. Nelson's Dissent to the Ninth Circuit Court of Appeals denial of USAA's Petition for Writ of Mandamus, p. 5, reproduced in the appendix at p. A-12, emphasis added.)

And again:

"[Waters] appear intent on not only vindicating their own wrongs, but in the process, cleaning up USAA's act by seeking $1.72 million in sanctions for its conduct in dozens of other cases unrelated to theirs.

USAA may need a cathartic experience such as Waters intend to give it. The propriety of any such sanctions is not before us. Since the district court lacks jurisdiction, and USAA's motion did no more than point that out, the propriety of sanctions is not for that court, either. *What USAA does not need is to undergo the ordeal it faces in a court without subject matter jurisdiction. The district court does not need to expend its efforts and the parties' time and money in pursuing a case which is so clearly outside its authority."* (Dissenting Opinion of Judge T. G. Nelson, supra, pp. 11-12, reproduced in the Appendix at pp. A-18 to A-19, emphasis added.)

This case, which is outside the jurisdiction of the district court, has already required USAA to expend hundreds of hours in retrieving 172 files from attorneys in practice all over the United States and in going through those files to produce, as the district court has ordered, various set and subsets of documents relating to jurisdiction. USAA is exposed further to the expenditure of time and expenditure of funds in preparation for a hearing requesting sanctions of $1.7 million. USAA's exposure to *sanctions* on the very issue that the district court wrongly decided, specifically the existence of or non-existence of diversity jurisdiction, makes this a compelling case requiring intervention by this Court by way of mandamus.

2. This Is a Case of Particular Public Importance

As pointed out by Judge Nelson in his opinion, USAA, as a large reciprocal insurance association, normally has 15,000 litigations pending annually. (A-12.) USAA is one of many reciprocal insurance companies which, by the nature of its business, is exposed to a large volume of annual litigation. *The district court's refusal to apply* the clear, unambiguous dictates of *Carden v. Arkoma*, strictly limiting the citizenship of artificial entities for diversity purposes to corporations only, *makes the issue of jurisdiction in this case one of widespread and critical public importance.* The district court's ruling incorrectly opens the door to litigation of thousands of cases by or against reciprocal insurance associations in federal court, thereby openly challenging this court's definitive mandate in Carden.

3. The District Court's Assertion of Diversity Jurisdiction in This Case Creates an Intolerable Conflict in the Law

The district court by ruling that USAA *can* be sued in federal court by a California resident, despite the fact that USAA has 186,000 California members, has ruled directly in conflict with *Baer v. United Services Automobile Association, supra,* and *Tuck v. United Services Automobile Association, supra.* Such a conflict would ordinarily be managed by a litigant, such as USAA, by getting out of federal court in the second and tenth circuits, and acceding to or asserting federal diversity jurisdiction in the Ninth Circuit as USAA has been told it must do in this case.

However, USAA is threatened with *sanctions* in this case for doing in other cases precisely what this present district court's order would *require,* – submitting to federal diversity jurisdiction. Moreover, the court has ordered discovery on, and will presumably consider, USAA's involvement in federal jurisdiction cases spanning an almost 20-year period in virtually every federal circuit in the nation.

The conflict in the law relating to diversity jurisdiction in this case therefore puts USAA in the intolerable position of being exposed to punishment for being inconsistent on an issue of law as to which the courts, by the decision in this case, have shown that they, too, can be inconsistent. Mandamus is particularly appropriate in this case to confine the district court to its lawful jurisdiction and to swiftly eliminate the conflict in the law that has been created by the district court's ruling.

4. USAA's Remedy by Appeal is Inadequate and Incomplete

Even though appeals may lie on both the issue of jurisdiction and on the potential imposition of sanctions, the possibility that appeals may be taken should not interfere with this Court's issuance of the extraordinary writ. (*See, In Re State of New York* (petition of Walsh), 256 U.S. 490, 497 (1921).)

As Judge Nelson pointed out, a potential appeal on the subject of jurisdiction would not result in a decision until approximately two years after the conclusion of this case. (A-11.) Considering the volume of litigation faced by USAA, it is a foregone conclusion that the district court's decision in this case will spawn similar disputes regarding federal diversity jurisdiction in not only cases presently pending, but those yet to be filed. Thus, it can be anticipated that a multiplicity of appeals on the issue of federal diversity jurisdiction will result from the district court's decision in this case. The considerable expenditure of USAA's resources in resolving the issues in this case by way of appeal, and by way of resolving similar issues in similar cases by way of appeals, *as well as the considerable expenditure of judicial resources* in resolving unnecessary appeals, will be completely obviated by this Court's issuance of mandamus directing the district court to dismiss this case which is so plainly in excess of its jurisdiction.

VI. CONCLUSION

Recognizing, as petitioner does, that mandamus is an extraordinary remedy, its exercise is compelled where, as here, an inferior court threatens to impose punitive sanctions against a litigant under the guise of an "inherent power" which (1) does not exist per se and (2) has no foundational subject matter jurisdiction in the first place.

Even if this case had been filed in federal court by an ordinary citizen, the utter disrespect for the stare decisis of *Baer, Tuck* and *Carden* would compel the need for mandamus relief.

But, here the action has been filed and is being vigorously prosecuted by a senior federal district judge who, perforce, must be held to a much higher level of knowledge and accountability with respect to the nuances of federal diversity jurisdiction.

In these times of intense public scrutiny of the conduct of all public officials, the circumstances of this case, we respectfully submit, call for swift and unambiguous relief from this Court so as to maintain the integrity of the entire federal judicial process – in fact and in perception.

The action of the district court in refusing to follow the clear direction of this Court in *Carden*, is a manifest abuse of judicial power in excess of the district court's jurisdiction for which the only adequate remedy is

mandamus, which petitioner respectfully requests be issued by this honorable Court.

Respectfully submitted,

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